

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)	
)	
Provision of Directory Listing)	CC Docket No. 99-273
Information Under the)	
Communications Act of 1934,)	
as Amended)	

**QWEST’S OPPOSITION TO INFONXX PETITION
FOR CLARIFICATION OR RECONSIDERATION**

**I. BECAUSE INFONXX’S PETITION IS PROCEDURALLY DEFECTIVE
AND CONTRARY TO EXISTING LAW, IT SHOULD BE DENIED**

Qwest Corporation and Qwest Communications Corporation (“Qwest”)¹ urge the Federal Communications Commission (“Commission”) to exercise caution when parsing the recent filing of InfoNXX, Inc. (“InfoNXX”).² While the title of the InfoNXX filing suggests it is but a benign request for “clarification” of the *Directory Listings Reconsideration Order*³ -- alternatively seeking reconsideration -- the filing is neither. It is a substantive request for rulemaking through an inappropriate procedural device. The Commission should deny InfoNXX’s requested relief.

Clarification or reconsideration is not what InfoNXX seeks. On the contrary, InfoNXX strives to have the Commission substantively change its position on the scope of access and use

¹ Qwest Communications Corporation is a certified competitive local exchange carrier (“CLEC”) and has compliance obligations under 47 U.S.C. § 251(b), as does Qwest Corporation. Accordingly, this filing is made on behalf of both companies.

² Petition for Clarification or, in the Alternative, Reconsideration of InfoNXX, Inc., CC Docket No. 99-273, filed Sept. 16, 2005 (“Petition” or “InfoNXX Petition”).

³ *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Communications Act of 1934, as Amended*, Order on Reconsideration, 20 FCC Rcd 9334 (2005) (“*Directory Listings Reconsideration Order*” or “*Reconsideration Order*”).

of non-listed and non-published information by local exchange carriers (“LEC”) *vis-à-vis* directory assistance (“DA”) providers.⁴

While the primary focus of the InfoNXX Petition seems quite limited -- the use of non-listed/non-published information for the provision of emergency contacts⁵ -- the ramifications of the Petition are far reaching and ill advised. The Petition implicates not only the provision of emergency contacts in a DA environment but the use of non-listed/non-published information by LECs in their provision of E911-type services and routine business operations, such as marketing to customers and communicating product and service information that might benefit customers either financially or from a quality-of-life perspective.

The Commission should deny the InfoNXX Petition because it raises no new issues with respect to DA uses, merely repeating arguments already rejected. On the other hand, with respect to substantive restrictions on a LEC’s use of its customers’ non-listed and non-published information, the Petition is more a request for further rulemaking than one for clarification or

⁴ InfoNXX adopts a pleading convention in which it melds non-listed and non-published information into a single “collective” phrase -- “non-published subscriber information.” InfoNXX Petition at 1. But this is not appropriate because non-listed information is treated very differently than non-published information by carriers, especially with regard to its release. Non-listed information *is* available through DA; while non-published information either is not available or is limited in terms of what is released (*e.g.*, only name and address but not telephone number). Thus, it is incorrect to say -- as InfoNXX does -- that LECs “withhold nonpublished subscriber information,” where the term includes “nonlisted” information. The latter information is provided to DA providers, but is sometimes marked with an indicator advising that the subscriber anticipated some kind of limitation on use (*e.g.*, no public display or publication of the information) when he/she chose that listing status.

⁵ An “emergency contact” is one where a caller seeks to get in touch with a person who has a non-published number. A LEC will make the contact on behalf of the caller -- whether the caller is a subscriber of the LEC’s or another carrier -- and advise the called party of the caller’s request to be put in touch with them. The calling party’s information is given to the called party so that that party can return the call if they desire. The Commission addressed “emergency contacts” in its *Directory Listings Reconsideration Order*, 20 FCC Rcd at 9342 ¶ 11 and n.45.

reconsideration. If InfoNXX wants to pursue its proposed theories and arguments, it should file a Petition for Further Rulemaking where the matter could be considered more appropriately.

II. INFONXX DOES NOT SEEK CLARIFICATION *OR* RECONSIDERATION BUT THE IMPOSITION OF A NEW CONDITION ON A LEC’S USE OF ITS CUSTOMER INFORMATION

InfoNXX complains that the Commission did not impose the same kind of nondiscrimination principle on the use of non-listed/non-published information for DA purposes as it did on other DA information provided by LECs.⁶ InfoNXX provides an example of the kind of discrimination it deems odious: “ILECs today, and in the future, can offer emergency services that competing providers cannot provide -- solely because of the competitors’ lack of access to [certain] information.”⁷ InfoNXX deems the fact that DA providers are not generally given access to information that would allow them to engage in emergency contacts as something that “will undermine competition in the wholesale DA market” and as being “inconsistent with Section 251(b)(3) of the Communications Act and Commission policy.”⁸

Because of its competitive concerns, InfoNXX seeks a statement from the Commission limiting a LEC’s use of its customers’ non-listed and non-published information generally.

InfoNXX implores the Commission

to *clarify* that certain emergency contact services constitute the only acceptable use of the nonpublished numbers [that include nonlisted information under InfoNXX’s convention] that LECs deny to competitive providers . . . [and] that if a LEC seeks to use this information *for any other reason*, the LEC must obtain a change in the Commission’s rules and make available the . . . subscriber information to competing DA providers.⁹

⁶ Petition at 1.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.* (emphasis added).

Under the guise of a “clarification,” InfoNXX seeks the imposition of a new substantive restriction on a LEC’s use of its customers’ non-published and non-listed information -- information that has independent significance beyond the realm of DA. Nothing in the *Directory Listings Reconsideration Order* supports such a restriction on a LEC’s use of its customers’ information.

Because there is nothing in the *Reconsideration Order* that provides an appropriate foundation for InfoNXX’s requested relief, it would be an error for the Commission to burden a LEC with an obligation to “obtain a change in the Commission’s rules,”¹⁰ in order to use the non-listed and non-published information of its customers. Rather the burden is on InfoNXX to obtain such a rule change, should it wish to have the Commission effectuate its outlined advocacy.

III. INFONXX’S CLARIFICATION WOULD RESULT IN A MATERIAL RESTRICTION ON A LEC’S USE OF ITS CUSTOMER INFORMATION

InfoNXX begins its advocacy by complaining about the Commission’s resolution of how non-listed and non-published information should be handled by a LEC in the case of emergency contacts.¹¹ But it proceeds to argue for the imposition of a condition that goes far beyond the DA environment or the context of emergency contacts. InfoNXX asks that the Commission “clarify that if a LEC seeks to use nonpublished numbers *in any other service offering*, the LEC must first obtain an amendment to the rules (or a waiver) and must agree to make the nonpublished numbers available to competing providers.”¹²

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 4 (emphasis added).

As a preliminary matter, it is not clear what InfoNXX means by “any other service offering.” At times the text of the Petition suggests InfoNXX means other “DA” offerings.¹³ But other portions of the Petition suggest a broader reach. For example, InfoNXX mentions that “ILECs today use [non-listed or non-published] information to provide various emergency services,”¹⁴ citing to tariff sections¹⁵ that -- at least in Qwest’s case -- do not pertain to the provision of emergency services as InfoNXX claims.

The Qwest tariffs cited by InfoNXX do not offer emergency service offerings. Rather, those tariffs outline the terms and conditions associated with Qwest’s *non-published service offering*.¹⁶ They advise subscribers of that service and that even though their information will not be made available to the general public, or to callers through DA, their subscriber information will be provided to emergency service providers (such as Public Safety Answering Points (“PSAP”)). The language is by way of a disclosure, but the substantive service being offered by Qwest under the tariff is the listing status.

At the point InfoNXX confuses a LEC’s provisioning of non-published service for the offering of “emergency services,” the reader becomes keenly aware of how far afield InfoNXX’s

¹³ This is one possible reading, since InfoNXX buttresses its argument in the Petition with a reference to the Commission’s prevention of “ILECs . . . giving their *own DA services* a competitive advantage by limiting the amount of DA information disclosed to competing competitors.” *Id.* at 5 (emphasis added).

¹⁴ *Id.* at 6. The term “emergency service” is different from “emergency contact.” InfoNXX’s citation to Qwest’s Arizona and Wyoming tariffs makes clear that InfoNXX is referencing types of 911/E911 and supporting emergency services.

¹⁵ *Id.* at n.19.

¹⁶ A customer’s listing status results from a conversation between a carrier and a subscriber at the point of local service (or maybe wireless service) installation. The customer can opt to have their information made available to the public through directory publications and DA (*i.e.*, published service); or not made available in a directory publication but available through DA (*i.e.*, non-listed service); or not available in a directory publication or through DA (*i.e.*, non-published service).

Petition is from either clarification or reconsideration. A DA provider is not a relevant party to the matter of what kind of listing status is chosen by a local exchange customer. Rather, the DA provider is the recipient of information associated with the customer's chosen status. The DA provider should be guided by the customer's choice in its provisioning of its DA – or other – services, not be acting in tension with that choice.

Moreover, to the extent InfoNXX claims that it should be able to provide non-listed and non-published information to those offering emergency services, it ignores the structure of the Telecommunications Act. Section 222(g) compels LECs to provide Subscriber List Information (“SLI”) -- including non-listed and non-published subscriber information -- directly to emergency service providers.¹⁷ Just as the Commission has held that Section 222 operates as *the* statutory provision relevant for those who desire SLI for directory publication purposes,¹⁸ Section 222(g) is *the* statutory provision available to those wanting private customer information for purposes of emergency services provisioning. Section 251(b)(3) has no bearing on the release of this non-private information to emergency service providers. Nor does the fact that a LEC is *compelled* to make its customers' non-listed and non-published information available to emergency service providers mean that DA providers should be free to ignore customer-designated privacy restrictions in order to expand the scope of their business operations or offerings.

¹⁷ 47 U.S.C. § 222(g).

¹⁸ *Directory Listings Reconsideration Order*, 20 FCC Rcd at 9340-41 ¶ 9. *See also, In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Communications Act of 1934, as Amended*, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, 14 FCC Rcd 15550, 15615-16 ¶ 124 (1999).

An additional problem with InfoNXX's position is its lack of clarity about what service offerings it contemplates would be affected by its filing. A reader cannot determine whether InfoNXX's Petition is meant to extend to LECs' retail service offerings generally, such as Caller ID and Last Call Return (which release non-published information unless the information is blocked) or traffic study reports (that might incorporate such information culled from the calling party). Nor is it clear whether a communication by a LEC about its products and services to its end user with a non-listed or non-published number would be deemed impermissible by InfoNXX and forbidden by its proposed restriction. Of course, a governmental restriction on the speech between carriers and their customers raises significant First Amendment concerns.¹⁹

For all the reasons outlined above, Qwest asks that the Commission deny InfoNXX's request for relief.

Respectfully submitted,

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¹⁹ Compare *U S WEST v. FCC*, 182 F.3d 1224, 1240 (10th Cir. 1999).

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **QWEST'S
OPPOSITION TO INFONXX PETITION FOR CLARIFICATION OR
RECONSIDERATION** to be 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 99-273, 2) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at FCC@bcpiweb.com and 3) served, via First Class United States mail, postage prepaid, on the party listed below.

/s/ Richard Grozier

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